

REMARKS

Favorable reconsideration of the instant application is respectfully requested in view of the above amendments and following remarks. Prior to the present amendment claims 1-23 were pending and under consideration. By the present amendment, claims 1, 2, 9, 11, and 12 have been canceled without prejudice and without acquiescence to the asserted grounds for rejection. Claims 3, 10, 13, 21, and 22 have been amended to either correct dependencies (due to canceled claims) or to include language sought by the Examiner. New claims 24, 25, 26, and 27 have been added that merely reflect combinations of various claims that were objected to and that the Examiner indicated would be allowable if written in independent form. No new matter has been added.

Rejection Under 35 U.S.C. § 112, second paragraph

Claims 21-23 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. In particular the Action asserts that that these claims omit an essential element, i.e., the instructions for detecting or quantifying viable cells in the kits claimed.

Applicants respectfully traverse this ground for rejection and submit that the claims are definite and that such instructions are not a necessary component. Nevertheless, without acquiescing to this ground of rejection and solely to expedite prosecution, Applicants have amended claims 21 and 22 to include such instructions. As claim 23 is dependent from claims 21 or 22, it is believed that no amendment is necessary. Withdrawal of this ground for rejection is respectfully requested.

Non-Statutory Double Patenting

Claims 15-23 stand provisionally rejected under the judicially created doctrine of obviousness type double patenting over claims 21-24 of copending (now issued) Application No. 09/696,710.

Applicants respectfully traverse this ground for rejection and submit that such the present claims are patentably distinct. Nevertheless, without acquiescing to this ground of rejection and solely to expedite prosecution, Applicants submit herewith a duly executed

terminal disclaimer over U.S. Pat. Appl. No. 09/696,710; thereby obviating this ground for rejection.

Claim Objections

Claims 11-14 stand objected to as being dependent upon a rejected base claim, but are indicated as being allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicants have added new claims 24, 25, 26, and 27 to obtain such claims. In particular claim 24 represents a combination of claims 1 and 11; whereas claim 25 represents a combination of claims 1, 9, and 12; whereas claim 26 represents a combination of claims 1, 2, and 11; and whereas claim 27 represents a combination of claims 1, 2, 9, and 12. As claim 13 was dependent on claim 12 and claim 14 is dependent on claim 13, claim 12 was canceled and claim 13 redirected to the newly added independent claims. Accordingly, Applicants respectfully submit that the newly added claims are in condition for allowance and that this objection can be properly removed.

The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

Application No. 10/087,200
Reply to Office Action dated December 16, 2003

All of the claims remaining in the application are now believed to be in condition for allowance. Favorable consideration and a Notice of Allowance are earnestly solicited. If any issues remain, please contact William Christiansen at (206) 622-4900.

Respectfully submitted,

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Terminal Disclaimer

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